

**FLYNN**

Serial No. **09/555,917**

Amendment in RCE dated December 30, 2003

Response to Office Action dated July 2, 2003

**REMARKS**

Upon entry of this amendment, claims 1-14 and 17 are pending. By the present amendment, claims 1 and 11 have been amended for clarity, and new claim 17 has been added. Favorable reconsideration of the application is respectfully requested.

The rejection of claims 1, 5-8 and 11-13 under 35 U.S.C. §102(e) over Astrom et al. (U.S. Patent No. 6,058,303, hereinafter "Astrom") is respectfully traversed. Without acquiescing in the rejection, claims 1 and 11 have been amended for clarity. Accordingly, the rejection will be discussed with respect to the claims as amended.

Astrom is directed to a system and method for subscriber activity supervision. In particular, Astrom discloses a system and method for monitoring the activity of a mobile subscriber in a GSM-based PLMN system from an Intelligent Network telecommunications system. The system described in Astrom includes multiple intelligent peripherals connected to a service control point over a network. When the service control point attempts to reach an intelligent peripheral and fails, the service control pint initiates an SMS-IP using a dummy SMS message. Upon detection of renewed subscriber activity of a mobile subscriber who was previously inactive or unreachable, a PLMN triggering

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notification is generated. The PLMN then transmits an alert to the SMS-IP which in turn notifies the service control point.

The message of Astrom always passes through the service control point. There is no disclosure in Astrom of the feature of providing an alternative (e.g., proxy) destination for holding a message that is not a point through which the message would have passed anyway (e.g., the service control point). In other words, in the system of Astrom, there is no proxy. Data is held at the messaging center (which otherwise acts as a forwarding means) until the message can be forwarded.

In complete contrast and distinction, the claimed method and apparatus provide a proxy in which the message is stored temporarily, and this proxy is only provided when required (e.g., when the target user is unreachable). This arrangement is much more appropriate in systems, for example, the Internet, which use peer-to-peer arrangements. Accordingly, in such an exemplary system, the user's home agent sets the destination to which the received data is to be sent only when reachability information indicates that the mobile node is unreachable. If the mobile node is reachable, the data is not sent to that intermediate destination, but is sent directly to the target mobile node, and not through a central service center.

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In contrast, in prior art SMS systems, such as that described by Astrom, all data is transmitted through the service center regardless of whether or not the target mobile terminal is currently reachable. It is then forwarded, either immediately or after a delay, depending upon when the target mobile node becomes available.

The independent claims specifically recite that when the target mobile node is unreachable, the destination to which the data is transmitted is an alternative destination other than the target, *not* an intermediate destination through which the data would by been routed anyway (as is the case with the system disclosed in Astrom). This is a fundamental distinction that is important in allowing data to be transmitted over a peer-to-peer type network. In the system of Astrom, the mobile terminal transmits a message to a service center regardless of whether the target mobile terminal is reachable or not. Such an arrangement is appropriate for a "star" or "hub" type system, but not for Internet-based peer-to-peer systems in which there is no central service center.

It is axiomatic that in order for a reference to anticipate a claim, the reference must disclose each and every feature of the claim. As set forth above, Astrom fails to disclose each and every feature of the claimed invention. For example, there is no disclosure in Astorm of the feature of providing an alternative (e.g., proxy) destination for data only when the target mobile user is unreachable.

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Therefore, Astrom fails to anticipate the claimed invention. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

The rejection of claims 2-4 under 35 U.S.C. §103(a) over Astrom in view of Kulkarin (U.S. Patent No. 5,862,481) is respectfully traversed.

It is respectfully submitted that Kulkarin fails to overcome the fundamental deficiencies noted above with respect to Astrom. Therefore, even if, *arguendo*, the combination of Astrom and Kulkarin were proper, the combination nevertheless fails to render the claimed invention obvious. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

The rejection of claims 9, 10 and 14 under 35 U.S.C. §103(a) over Astrom in view of Malkin (U.S. Patent No. 6,061,650) is respectfully traversed.

It is respectfully submitted that Malkin fails to overcome the fundamental deficiencies noted above with respect to Astrom. Therefore, even if, *arguendo*, the combination of Astrom and Malkin were proper, the combination nevertheless fails to render the claimed invention obvious. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

In view of the foregoing, it is respectfully submitted that the entire application is in condition for allowance. Favorable reconsideration of the application and prompt allowance of the claims are earnestly solicited.

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Should the Examiner deem that further issues require resolution prior to allowance, the Examiner is invited to contact the undersigned attorney of record at the telephone number set forth below.

Respectfully submitted,

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